



**PHIL BRYANT**  
**STATE AUDITOR**

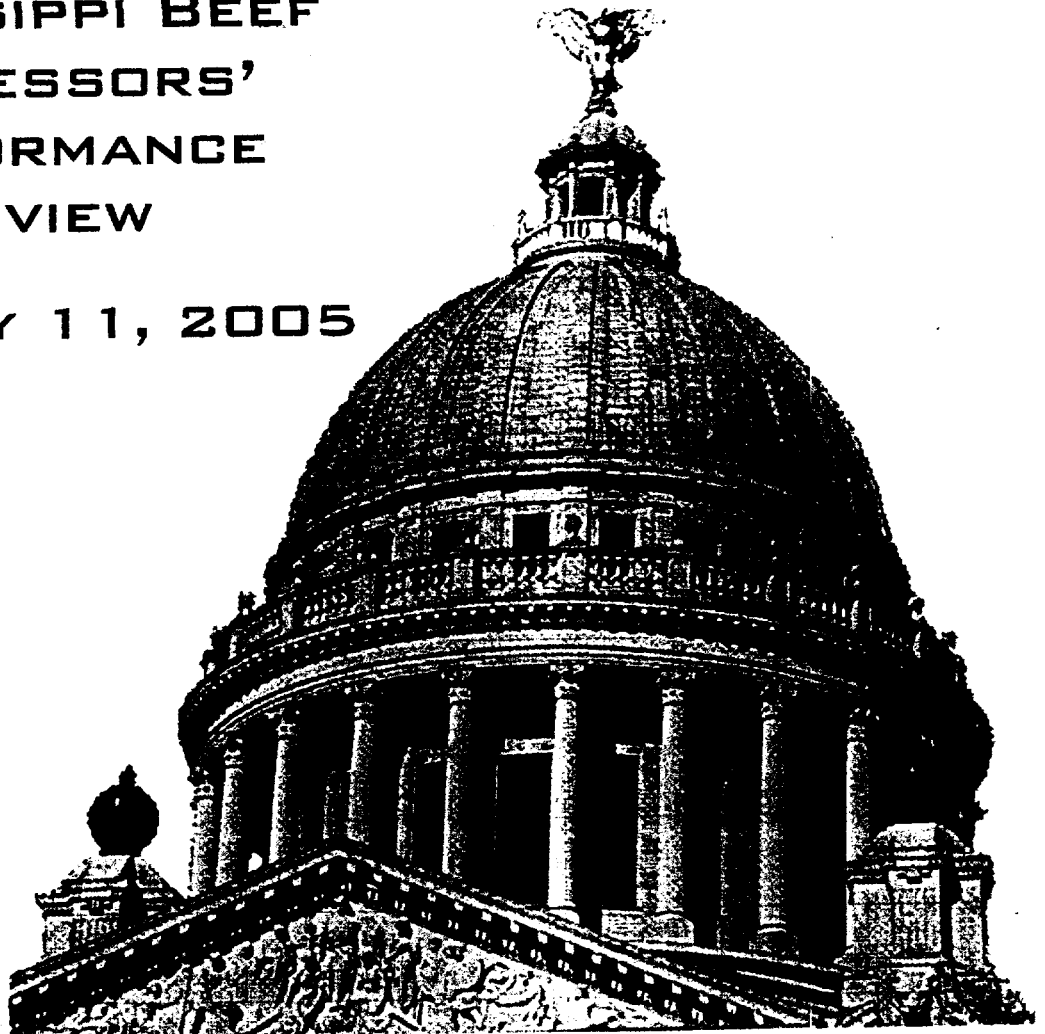
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Performance Audit Division

**AUDIT RESPONSE  
TO  
COMMISSIONER  
LESTER SPELL**

**MISSISSIPPI BEEF  
PROCESSORS'  
PERFORMANCE  
REVIEW**

**FEBRUARY 11, 2005**





**STATE OF MISSISSIPPI**  
**OFFICE OF THE STATE AUDITOR**  
**PHIL BRYANT**  
AUDITOR

February 11, 2005

**HAND MAIL**

Commissioner Lester Spell  
MS Department of Agriculture & Commerce  
121 North Jefferson  
Jackson, Mississippi 39202

Dear Dr. Spell:

Enclosed are our answers to your audit responses submitted February 7, 2005. I sincerely appreciate your efforts to clarify our performance audit report and hope the enclosed material is beneficial. Your letter and response, along with our answers, will be included in our next report. The report will also include a list of the twenty-nine (29) other projects supported by the Land, Water, and Timber Resources Board.

We have reviewed the draft of the LWTRB application and believe it to be a competent document and should be of great benefit to your board. It's evolution is certainly a positive step in assuring the integrity of applicants. For this effort, you and the Board are to be commended.

It is our desire to make the comprehensive reports on the Mississippi Beef Processors fair and independent as possible. Your responses to our report and support of our recommendations will certainly improve this process.

With best regards, I remain,

Sincerely,

A handwritten signature in black ink, reading "Phil Bryant", is positioned above the printed name and title.

Phil Bryant  
State Auditor

PB/dm

enclosure



# MISSISSIPPI OFFICE OF THE STATE AUDITOR

PHIL BRYANT, AUDITOR

AUDIT RESPONSE TO COMMISSIONER LESTER SPELL

## *Mississippi Beef Processors' Performance Review* *February 11, 2005*

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### **RESPONSE TO COMMENT #1**

**Comment from Commissioner Spell:** "The audit report is incorrect in stating that I '...introduced Mr. Hall into the process' (page 2 of the Executive Summary). As quoted in the Sunday, January 30, 2005 edition of The Clarion Ledger, former Representative Donnie Ryals states that he made the initial contact with the Halls. Prior to Mr. Ryals' contact, I had never met the Halls. Therefore, any subsequent assumptions in the audit report that I knew that 'Hall was imminently capable of overseeing the construction and operation of a beef processing plant' cannot be supported by facts."

**Audit Response:** The report does not state Dr. Spell was the first to know Mr. Hall but rather to introduce him into the process - this "process" being the Land, Water & Timber Resources Board ("Board") funding process. Our statement was based in part on the following information:

- In a December 5, 2004 article,<sup>1</sup> Commissioner Spell is quoted as saying, "off-and-on discussions with Hall led to a meeting between Hall and the Land, Water and Timber Resources Board." The article also quotes Commissioner Spell as saying that he went on the trip to Nashville in 2000 to meet with Richard Hall.
- On June 19, 2001, at a Board Screening Committee meeting Mr. Hall asked for a \$15 million grant for his proposed beef processing facility. According to the minutes of the meeting "Dr. Spell moved that, within the following week, Mr. (J.C.) Burns and Mr. (Dan) Tucker would prepare a grant package to include all incentives offered by the State." The motion was unanimously approved. On July 30, 2001, the full Board unanimously approved a grant requested by Hall for \$5 million.

It is our assumption that Dr. Spell and the Board believed Mr. Hall was imminently qualified to oversee the construction and operation of a beef processing plant before moving to provide him with a \$5 million grant.

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<sup>1</sup> Article from the Meat Industry News Service ([www.spcnetwork.com/mii/2004/041215.htm](http://www.spcnetwork.com/mii/2004/041215.htm)) entitled Mississippi Officials Urged Hall to Run Beef Plant

**RESPONSE TO COMMENT #2**

**Comment from Commissioner Spell:** “Second, in the executive summary and on page 4 of the audit report, it is wrong to state that a 1999 in-house memo pertaining to beef processing was ignored or overlooked. This memo was never shared with the LWTRB. In fact I never knew of this memo until recently contacted by a Clarion-Ledger reporter, and I saw it for the first time in the audit report. Its existence or any reference to it was never shared in any LWTRB meeting, nor was it cited in the project specific study on the Oakland plant in January of 2001.”

**Audit Response:** The OSA report does not identify the December 1999 memo as the document overlooked. The “warnings of the volatility of the cull cow processing market” were contained in several documents included in the report on pages 5 through 7.

I would ask you to carefully review the OSA report which shows numerous “warnings” that were minimized or overlooked by proponents of the project. The first of which was Mr. Hall’s inability to obtain private sector financing for a cull cow processing plant.

However, the December 1999 memo’s author, Dr. Virgil Culver, was present as a potential resource at a June 19, 2001 Screening Committee Meeting of the Board where the Mississippi Beef Processors (MBP) project was reviewed. Furthermore, the Director of the Mississippi Agribusiness Council, Mr. Fred Heindl—who was faxed the memo on February 16, 2000—was a voting member of the Board and present at the May 10, 2001 inaugural meeting.

Representative Bo Eaton stated to the *Clarion-Ledger* that Dr. Spell and other officials were present at an October 2000 meeting where the memo was discussed, (“*Beef Plant Risky, Memo Warned*” published by the *Clarion-Ledger* on January 14, 2005).

Dr. Virgil Culver also stated in the same article that “Dr. Spell was present at the October 2000 meeting along with Eaton; Agriculture Department employees Chris Sparkman, Roger Barlow and Rickey Gray; Sammy Blossom, executive vice president of the Mississippi Cattlemen’s Association; Lee, Culver; and fellow MSU employees Terry Kiser, Bob Rogers, Charlie Forest, Ken Hood and the late Roger McCarty. Culver said the meeting focused on the need for a detailed study of the cull cow industry and ‘it’s reasonable to assume some were made aware’ of the December 2, 1999 memo.”

The totality of these circumstances would suggest some knowledge of the ’99 memo. However, we will not dispute Dr. Spell’s statement that he never knew it existed.

**RESPONSE TO COMMENT #3**

**Comment from Commissioner Spell:** “Third, the audit report presents a personal memo from Mr. Bob Rohrlack that has only recently come to light which leads the public to believe that I pressured people—this is untrue. Pressure is not my style, and pressure was never my intent—only the successful completion of the project. Those who know me know that I treat agriculture department employees and employees of other agencies with respect.”

**Audit Response:** The Rohrlack memo was obtained from MDA by the *Clarion-Ledger* with the approval of the Attorney General’s Office. As a public document representing the concerns of the then MDA director, it was included in the auditor’s report as supporting documentation. Any disagreement with the memo is understandable but should be directed to MDA or Mr. Rohrlack. However, OSA will include concerns from Commissioner Spell in the next volume of this report.

**RESPONSE TO COMMENT #4**

**Comment from Commissioner Spell:** “Fourth, the audit report does not mention that the Office of the Attorney General, MDAC, MDA, and the Office of the State Auditor had been asked in April, 2002, to be fully engaged with this project. Neither the letter of transmittal nor the audit report reveals that in an April 26, 2002 meeting at the Capitol, Representative McCoy requested and stressed that all state agencies present for the meeting become fully engaged in this project from that day forward and to be sure all things were done right. At this point the grant agreement remained to be finalized.”

**Audit Response:** On July 30, 2001, the Board voted unanimously to authorize MBP a \$5 million grant. By the April 26<sup>th</sup> meeting, the legislature had passed and the Governor had signed bills several weeks earlier (March 31 and April 8, 2002 respectively) making the MBP project and the Board grant possible. There were two agreements unanimously approved by the Board. The first agreement for the \$21 million, which was signed by Dr. Spell and others, was dated April 26, 2002. This agreement mandated that the Board provide a grant of \$5 million to MBP. The second agreement finalizing the \$5 million grant was approved by a unanimous vote of the Board on May 3, 2002. (Copies of the agreements are enclosed for review.)

**RESPONSE TO COMMENT #5**

**Comment from Commissioner Spell:** “Fifth, the audit report in highlighting the personal memo of Rohrlack suggests that he felt the project was ‘doomed from the beginning.’ However, **the audit report fails to acknowledge that Rohrlack voted to approve the project without objections, and failed to bring his “concerns” as stated in his memo to the attention of the LWTRB.** When the agreement was finalized in May 2002, Rohrlack had been Director of MDA for over 5 months.”

**Audit Response:** While it is true that Mr. Rohrlack voted (on May 3, 2002) to finalize the grant agreement that had been approved prior to his membership on the Board, it would be incorrect to say that he did not express concerns about the project up until and beyond that date. For example:

- On April 22, 2002, Mr. Rohrlack requested an official opinion from Attorney General Mike Moore regarding the Board’s authority to provide funding to Mr. Hall;
- During the April 26, 2002 meeting, Mr. Rohrlack commented that the project needed to be done right because it should set a precedent for future projects;
- During the subsequent May 3, 2002 meeting, after many amendments to the final grant agreement, he suggested accountability clauses be added to future grant agreements;
- Mr. Rohrlack requested that the legislature modify the LWT code section to remove MDA from the Board and from administering Board funds; and
- In January 2003, when Hall violated the terms of his agreement with the Bank, Mr. Rohrlack stopped the project payments.

**RESPONSE TO COMMENT #6**

**Comment from Commissioner Spell:** “Sixth, the report does not emphasize that after the LWTRB’s initial grant, the LWTRB was not involved in any disbursement of the \$35 million loan.”

**Audit Response:** The report does not suggest the \$35 million loan was disbursed by the Board, nor does it emphasize it was not. The \$35 million loan guaranteed by the state of Mississippi was disbursed by Community Bank. However, the agreement<sup>2</sup> between Community Bank and the state of Mississippi for the \$21 million loan was signed by Dr. Spell and others on or about April 26, 2002.

<sup>2</sup> “This agreement is made this 26<sup>th</sup> day of April, 2002, by and among THE STATE OF MISSISSIPPI, acting through the MISSISSIPPI DEVELOPMENT AUTHORITY (MDA) and the MISSISSIPPI LAND, WATER AND TIMBER RESOURCES BOARD (Resources Board), YALOBUSHA COUNTY, MISSISSIPPI, acting by and through its BOARD OF SUPERVISORS (County), COMMUNITY BANK OF MISSISSIPPI (Bank) and MISSISSIPPI BEEF PROCESSORS, LLC (Company).”



### **RESPONSE TO ADDITIONAL COMMENTS**

**Comment from Commissioner Spell:** “One of the major reasons that the project is not operating today is due to poor project implementation, not because the project was poor in concept. When the facility was operational, it was able to secure all the cattle it needed and it was able to sell the products that it produced. The project did not fail because of actions of the Legislature or the LWTRB. Everyone involved in those two groups had honest and sincere intentions.”

**Audit Response:** OSA agrees that the project was poorly implemented. However, data and research gathered by OSA Performance Audit staff show that the Mississippi Beef Processors’ project was also a poor concept for the state of Mississippi. The research and data gathered by OSA from the 1998-2000 time period show that a cull cow processing facility would have had difficulty succeeding in a “best case” scenario in the Mississippi region. Furthermore, the plant never processed the projected 1,000 head of cattle per day and failed in less than 4 months. The audit does not question the honesty and sincerity of the Legislature or the LWTRB.

**Comment from Commissioner Spell:** “One of my duties as Commissioner is to champion agricultural-related projects that enhance market opportunities for agriculture and help create jobs in our state. I supported this project for those reasons. As co-chairman of the LWTRB, my responsibility is to work with agricultural-related interests in identifying potential prospects for the board’s consideration.”

**Audit Response:** The Auditor recognizes that one of the Commissioner’s duties is to champion agriculture related projects.

## **APPENDICES 1**

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# **\$21 MILLION AGREEMENT FOR THE MISSISSIPPI BEEF PROCESSORS' PROJECT**

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**APRIL 26, 2002**



## AGREEMENT

**THIS AGREEMENT** (this "Agreement") is made this the 26<sup>th</sup> day of April, 2002, by and among THE STATE OF MISSISSIPPI, acting through the MISSISSIPPI DEVELOPMENT AUTHORITY ("MDA") and the MISSISSIPPI LAND, WATER AND TIMBER RESOURCES BOARD ("Resources Board"), YALOBUSHA COUNTY, MISSISSIPPI, acting by and through its BOARD OF SUPERVISORS ("County"), COMMUNITY BANK OF MISSISSIPPI ("Bank") and MISSISSIPPI BEEF PROCESSORS, LLC ("Company").

### **RECITALS:**

**WHEREAS**, the State of Mississippi ("State") is committed to fostering an environment that will promote projects that add value to the State's land, water and timber resources and which further the economic development of the State;

**WHEREAS**, the Company is desirous of developing, owning and operating a beef processing facility ("Project") including buildings, equipment, fixtures and a leasehold interest in the Project Site (as hereafter defined) in the County which will when completed result in the creation of three hundred fifty (350) net new full time jobs in the State and the investment by the Company of Twenty-One Million Dollars (\$21,000,000.00) in the State;

**WHEREAS**, the State, acting through MDA and the Resources Board, has determined that the Project would be a benefit to the residents of the State by increasing both employment and tax revenues and would add value to the State's natural resources, and the County has similarly determined that the Project would be a benefit to the residents of the County and would improve the standard of living in the County by increasing both employment and local tax revenues;

**WHEREAS**, the parties have engaged in discussions relating to the establishment of the aforementioned activities of the Company in Mississippi and the County and the parties wish to set forth their mutual understandings with respect to the Project and to set forth their respective willingness to proceed to accomplish the Project;

**NOW, THEREFORE**, the parties agree to further pursue the project as follows:

1. Purpose.

The purpose of this Agreement is to set forth the respective parties' agreements and proposed undertakings relative to the establishment of the Project in the State and County all for the benefit of the residents of the State and County.

2. Company Undertakings.

a. The Company agrees to establish and operate the Project in Yalobusha County, Mississippi, which when completed will create three hundred fifty (350) new net full time jobs in the County with an investment by the Company of approximately Twenty-One Million Dollars (\$21,000,000.00) in the State and the County.

b. The Company will finance its portion of the Project through a loan from the Bank to the Company and such loan will be guaranteed by the State pursuant to Section 69-2-13 (3) (b), Mississippi Code of 1972, as amended. The Company understands and agrees that in order to receive said loan guaranty that the Company must meet the statutory and guideline requirements of the Agribusiness Enterprise Program, Sections 69-2-1 et seq., Mississippi Code of 1972, as amended, and that the terms of such guarantee must be approved by the Attorney General of the State.

c. The Company shall lease the land (the "Project Site") from the County, the terms of which shall be mutually agreed upon by the parties to this Agreement, and the Project shall be located on the Project Site.

d. The Company shall not later than May 10, 2002 supply a Project Budget reasonably satisfactory to all parties to this Agreement detailing all estimated expenditures for the development, construction, start-up and operation of the Project. Such Project Budget should identify in detail the expected use of all funds provided under this Agreement.

e. All information furnished to MDA, the Resources Board and the County by the Company and its representatives has been and is true and correct.

f. The Company shall comply with the terms and conditions of each grant, loan or program under which funds are provided for under this Agreement or otherwise in connection with the Project.

g. Final architectural and engineering plans for the Project shall be timely submitted to MDA and the Resources Board for approval.

h. The Company or its principals shall provide security with a value of not less than \$1,500,000.00 to the Bank to secure the Line of Credit (as hereafter defined) which security shall remain as security for the Line of Credit until the Line of Credit is paid in full. Said security shall be satisfactory to the Resources Board.

3. Resources Board Undertakings.

The Resources Board agrees to provide a grant (the "Grant") of Five Million Dollars (\$5,000,000.00) to the Company to design and construct the Project under the terms of a grant agreement to be entered into by the Resources Board and the Company. The terms and provisions of said grant agreement shall be satisfactory to MDA and the Attorney General of the State. The proceeds of the Grant shall be used for professional fees, equipment, buildings and related improvements, or for reimbursement of the Company for its payment of such fees and expenses. It is understood and agreed by the parties that the proceeds of the Grant will be distributed to the Company or its contractors and vendors under procedures and guidelines developed by MDA as set forth in said grant agreement, and subject to a favorable official opinion of the Attorney General of the State relative to the proposed use of the Grant. The parties expect to enter into said grant agreement on or before May 15, 2002.

4. MDA Undertakings.

MDA agrees to work with the Company in obtaining all applicable incentives, including tax incentives available through the Mississippi State Tax Commission, in particular, any and all jobs tax credits that the Company may be eligible for under Section 57-73-21, Mississippi Code of 1972, as amended. Further, MDA agrees to work with the Company in obtaining financing under any eligible programs administered by MDA.

5. Yalobusha County Undertakings.

a. The County agrees to lease the Project Site to the Company. The terms of such lease shall be satisfactory to the Bank, MDA and the Resources Board.

b. The County agrees to provide well water (potable water supply) and a wastewater treatment facility which will be available to the Company for its use. The wastewater treatment facility and well for potable water supply will be owned by the County and fees and charges associated with the use of the facilities will be mutually agreed upon by the County and the

Company. The County has made or will timely make application under the following MDA programs: the Small Municipalities and Limited Population Counties Program in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) to be utilized for a gas line in connection with the Project and other development in the County, and the Community Development Block Grant Program in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00) to be utilized for a wastewater treatment facility, a well for potable water supply, and access roads. If the costs of such wastewater treatment facility, well for potable water supply, and access roads exceed the grant amounts or grants are not received by the County, the County and the Company will each be responsible for 50% of such costs

c. Once completed, the County agrees to provide to the Company a ten (10) year ad valorem tax exemption under Section 27-31-101, Mississippi Code of 1972, as amended.

6. Bank Undertaking.

a. The Bank shall enter into a Loan (the "Loan") with the Company in an amount not to exceed Twenty-One Million Dollars (\$21,000,000.00). The Loan will be guaranteed by a one hundred percent (100%) loan guarantee from the State through MDA pursuant to Section 69-2-13 (3) (b), Mississippi Code of 1972, as amended. The terms of such loan guarantee shall be satisfactory to the Bank and MDA. The Loan shall be secured by a second lien on the Project subject to the lien on the Project as provided for in Section 6(d) hereof.

b. The Loan shall be evidenced by a loan agreement with terms and provisions satisfactory to MDA, the Resources Board and the Attorney General of the State.

c. The parties to this Agreement agree that the proceeds of the Loan will not be disbursed until all of the proceeds of the Grant have been disbursed and that all disbursements of the Grant and the Loan shall be approved by MDA.

d. The Bank shall provide the Company with a Six Million Five Hundred Thousand Dollar (\$6,500,000.00) operating line of credit (the "Line of Credit") which shall be secured by a first lien on the Project. Two Million Dollars (\$2,000,000.00) of the Line of Credit shall be immediately available to the Company to purchase equipment for the Project; provided that (i) the fair market value of said equipment is at least equal to the amount of the Line of Credit disbursed for such equipment purchase, (ii) the Company grants a first lien on said equipment to the Bank and (iii) the

Bank receives such other security as it may reasonably require in connection with the disbursement of said Two Million Dollars (\$2,000,000.00) of the Line of Credit.

e. Prior to foreclosing its lien on the Project which secures the Line of Credit, the Bank shall reasonably cooperate with the Board in finding ways to insure continued operation of the Project.

7. Conditions Precedent.

It is understood and agreed by the parties that any and all undertakings and agreements of the governmental parties to this Agreement are subject to the Company providing the Project Budget as set forth in Section 2(d) of this Agreement and the official opinion of the Attorney General as set forth in Section 3 of this Agreement. Furthermore, the Company shall provide evidence of all required federal, State and local permits and approvals in connection with the construction of the Project prior to disbursement of the proceeds of the Loan.

8. Expenses.

The parties hereto will each bear their own expenses related to the investigation, negotiation, permissible permits and licenses, and consummation of the Project; provided, however, all reasonable legal fees and expenses of MDA and Resources Board shall be paid from the proceeds of the Grant and/or by the Resources Board.

9. Amendments.

The terms of this Agreement may be modified or waived only by a separate writing signed by each of the parties of this Agreement that expressly modifies or waives any such term.

10. Applicable Law.

This agreement will be construed in accordance with and governed by the laws of the State without regard to its conflict of laws provisions.

11. Counterparts.

This Agreement may be signed in any number of counterparts with the same effect as if each of the signatures were on the same Agreement.

12. Entire Agreement.

This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, promises, proposals, representations, understandings, and negotiations (whether written or oral).

The parties hereto have caused this Agreement to be executed on the date set forth first above.

STATE OF MISSISSIPPI, ACTING  
THROUGH THE MISSISSIPPI  
DEVELOPMENT AUTHORITY

BY: Bob Rohulock  
Executive Director

STATE OF MISSISSIPPI, ACTING  
THROUGH MISSISSIPPI LAND, WATER  
AND TIMBER RESOURCES BOARD

BY: [Signature]  
Co-Chairman

BY: Bob Rohulock  
Co-Chairman

YALOBUSHA COUNTY, MISSISSIPPI

BY: C. E. McMillan  
President of Board of Supervisors

MISSISSIPPI BEEF PROCESSORS, LLC

BY: [Signature]  
Richard N. Hall, Jr.

COMMUNITY BANK OF MISSISSIPPI

BY: Danell Brown  
TITLE: President & CEO

## **APPENDICES 2**

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### **\$5 MILLION GRANT AGREEMENT FOR THE MISSISSIPPI BEEF PROCESSORS' PROJECT**

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**MAY 3, 2002**



Thereupon, David Waide offered and moved the adoption of the following resolution:

**RESOLUTION APPROVING A GRANT IN THE AMOUNT OF \$5,000,000 TO MISSISSIPPI BEEF PROCESSORS, LLC UNDER THE MISSISSIPPI LAND, WATER AND TIMBER RESOURCES ACT; APPROVING THE FORM OF AND AUTHORIZING AND APPROVING THE EXECUTION AND DELIVERY OF A GRANT AGREEMENT BY AND BETWEEN THE MISSISSIPPI LAND, WATER AND TIMBER RESOURCES BOARD AND MISSISSIPPI BEEF PROCESSORS, LLC; AND FOR RELATED PURPOSES.**

**WHEREAS**, the Mississippi Land, Water and Timber Resources Act, being Sections 69-46-1 *et seq.*, Mississippi Code of 1972, as amended (the "Act"), was enacted for the purpose of assisting the agricultural industry in the State of Mississippi (the "State") in the development, marketing and distribution of agricultural products by providing loans and/or grants for projects qualifying for assistance under the Act; and

**WHEREAS**, under the Act and guidelines adopted by the Mississippi Land, Water and Timber Resources Board (the "Board") under the Act (the "Guidelines"), the Board is authorized to make loans and/or grants to public and private entities for projects meeting the requirements of the Act and the Guidelines; and

**WHEREAS**, Mississippi Beef Processors, LLC (the "Grantee") did previously make application to the Board for a grant under the Act in the amount of \$5,000,000 to be used to finance the design and construction of a beef processing facility in Yalobusha County, Mississippi (the "Project"); and

**WHEREAS**, the Project will further the purposes of the Act by assisting the State's agricultural industry in the development, marketing and distribution of agricultural products; and

**WHEREAS**, the Project will be a benefit to the residents of the State by increasing both employment and tax revenues in the State; and

**WHEREAS**, on July 30, 2001 and the April 26, 2002, the Board approved a grant in the amount of \$5,000,000 (the "Grant") to the Grantee; and

**WHEREAS**, the Grant is authorized by the Act; and

**WHEREAS**, there has been prepared and submitted to the Board the form of a Grant Agreement by and between the Board and the Grantee outlining the obligations of the Grantee with regard to the Grant and the Project (the "Grant Agreement") which Grant Agreement is attached as Exhibit A hereto and incorporated herein by this reference thereto; and

**WHEREAS**, it appears that the Grant Agreement, which document is now before the Board, is in appropriate form and is an appropriate document for the purposes identified; and

**WHEREAS**, all conditions, acts and things required by the Act, the Guidelines and the Constitution and laws of the State to have existed, to have happened, and to have been performed precedent to and in connection with the adoption of this resolution and the execution of the Grant Agreement have happened and have been performed in regular and due time, form and manner as required by law.

**NOW, THEREFORE, BE IT RESOLVED, DETERMINED AND ORDERED BY THE MISSISSIPPI LAND, WATER AND TIMBER RESOURCES BOARD, AS FOLLOWS:**

**SECTION 1.** All recitations hereinabove made are found and adjudicated to be true and correct.

**SECTION 2.** The Board does hereby ratify and confirm its prior approval of the Grant to the Grantee.

**SECTION 3.** The form of the Grant Agreement in the form submitted to this meeting and made a part of this resolution as though set forth in full herein be, and the same hereby is, approved in substantially said form. The Co-Chairmen of the Board are hereby authorized and directed to execute and deliver the Grant Agreement on behalf of the Board with such changes, insertions, and omissions as may be approved by such officers, said execution being conclusive evidence of such approval.

**SECTION 4.** As set forth in the Grant Agreement, it is the desire of the Board that the Mississippi Development Authority ("MDA") administer the disbursement of the Grant in accordance with the Guidelines and its guidelines and procedures. The Co-Chairmen of the Board be and are hereby authorized and directed to deliver a copy of this resolution and the executed Grant Agreement to MDA.

**SECTION 5.** From and after the execution and delivery of the Grant Agreement, the proper officers, directors, agents and employees of the Board, the State and MDA are hereby authorized, empowered and directed to do all such acts and things and to execute all such other documents as may be necessary to carry out and comply with the provisions of this resolution and the Grant Agreement.

**SECTION 6.** All resolutions and orders, or parts thereof, in conflict herewith are, to the extent of such conflict, hereby repealed, and this resolution shall become effective immediately.

Chance Carter seconded the motion to adopt the foregoing resolution, and the question was put to a vote.

The motion having received the affirmative vote of all of the members of the Board present, being a quorum of said Board, Co-Chairman Spell declared the motion carried and the resolution adopted, this 3<sup>rd</sup> day of May, 2002.

**EXHIBIT A**  
**GRANT AGREEMENT**

## **GRANT AGREEMENT**

**THIS GRANT AGREEMENT**, dated as of May 1, 2002 (this "Agreement"), by and between the Mississippi Land, Water and Timber Resources Board (acting for and on behalf of the State of Mississippi) (the "Board") and Mississippi Beef Processors, LLC, a Mississippi limited partnership (the "Grantee").

### **WITNESSETH:**

**WHEREAS**, the Mississippi Land, Water and Timber Resources Act, being Sections 69-46-1 *et seq.*, Mississippi Code of 1972, as amended (the "Act"), was enacted for the purpose of assisting the agricultural industry in the State of Mississippi (the "State") in the development, marketing and distribution of agricultural products by providing loans and/or grants for projects qualifying for assistance under the Act; and

**WHEREAS**, under the Act and guidelines adopted by the Board under the Act (the "Guidelines"), the Board is authorized to make loans and/or grants to public and private entities for projects meeting the requirements of the Act and the Guidelines; and

**WHEREAS**, pursuant to the Act and the Guidelines, the Grantee has filed an application (the "Application") with the Board for a grant to be used to design and construct a beef processing facility in Yalobusha County, Mississippi (the "Project"); and

**WHEREAS**, the Project will further the purposes of the Act by assisting the State's agricultural industry in the development, marketing and distribution of agricultural products; and

**WHEREAS**, the Project will be a benefit to the residents of the State by increasing both employment and tax revenues in the State; and

**WHEREAS**, based upon the Application and other relevant factors, the Board has agreed to provide the Grantee with a grant under the Act in the amount of Five Million Dollars (\$5,000,000) (the "Grant") under the terms and conditions set forth in this Agreement, in order to fund, in part, the costs of the Project; and

**WHEREAS**, the Grant is authorized by the Act; and

**WHEREAS**, the Board, in accordance with the Act, desires that Mississippi Development Authority ("MDA") administer the disbursement of the proceeds of the Grant in accordance with this Agreement and the Guidelines; and

**WHEREAS**, on November 1, 2001, the State issued its \$29,950,000 Taxable General Obligation Bonds (Mississippi Business Investment Act Issue, Series X, Mississippi Farm Reform Act Issue, Series P, Mississippi Small Municipalities and Limited Population Counties Issue, Mississippi Land, Water and Timber Resources Issue and Mississippi Telecommunication Conference and Training Center Act Issue, Series A)

(the "Bonds") for the purpose, in part, of funding loans and/or grants for projects qualifying for assistance under the Act, such as the Grant; and

**WHEREAS**, on July 30, 2001, the Board approved the Project for funding and on April 26, 2002, the Board approved an agreement (the "April Agreement") among the Board, MDA, Yalobusha County, Mississippi, Community Bank of Mississippi (the "Bank") and the Grantee setting forth the undertakings of each party in connection with the financing, design and construction of the Project; and

**WHEREAS**, the April Agreement confirmed the prior agreement of the Board to provide the Grant to the Grantee; and

**WHEREAS**, the April Agreement provides that the Bank will make two (2) loans to the Grantee (the "Loans") in connection with the construction and operation of the Project; and

**WHEREAS**, the parties hereto agree that it is necessary to provide for and demonstrate compliance with the provisions of the Act and the Guidelines in connection with the Grant; and

**WHEREAS**, it is also necessary to assure that the public purposes of the Act are satisfied by insuring that the proceeds of the Grant are used for the development, marketing and distribution of agricultural products.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**, that the parties hereto intend to be legally bound hereby and in consideration of the mutual covenants hereinafter contained do hereby agree as follows:

**Section 1. Grant.** The Board hereby agrees to make to the Grantee and the Grantee hereby agrees to accept from the Board the Grant pursuant and subject to the terms of this Agreement, the Act and the Guidelines in the amount of Five Million Dollars (\$5,000,000). The Grantee hereby agrees that it will apply the proceeds of the Grant only to costs directly related to the design and construction of the Project as described in Section 2(d) of this Agreement. The Grant shall be disbursed by the Board in installments as provided in Section 2 and Section 4 of this Agreement. The Board's obligation to make the Grant and to disburse the Grant in installments to the Grantee shall be subject to all of the terms and conditions of this Agreement, and the Grantee satisfying all of its obligations under this Agreement, the Act and the Guidelines. The Board requests MDA to administer the disbursement of the proceeds of the Grant to the Grantee in accordance with the Guidelines and its procedures and guidelines.

**Section 2. Conditions of Disbursements.** The obligation of the Board to make any disbursement of the Grant shall be subject to the following conditions, as well as any others set forth herein and in the Guidelines:

- (a) The Grantee shall not be in default under this Agreement, the April Agreement, the Loans or the Act and shall be in compliance with the terms and provisions of the Guidelines and the Act.
- (b) The design and construction of the Project shall have progressed at a rate and in a manner reasonably satisfactory to the Board.
- (c) The receipt by the Board and the MDA of a certificate of an authorized representative of the Grantee as set forth in Section 3 of this Agreement, a requisition as described in Section 4 of this Agreement and the notice required of the Grantee as set forth in Section 4 of this Agreement for each such disbursement. If the Grantee fails at any time to meet the conditions precedent to any disbursement of the Grant as specified in the preceding sentence, the obligation of the Board to make further disbursements in connection with the Grant shall cease until such time as such conditions precedent are met and satisfied. All rights of the Grantee to request disbursement of any portion of the Grant not disbursed prior to May 1, 2003, shall terminate on May 1, 2003, and may be applied by the State in any manner consistent with the terms of the resolution of the State Bond Commission directing the issuance and prescribing the form and details of the Bonds and the Act.
- (d) The proceeds of the Grant shall be used only for professional fees, equipment, buildings and related improvements in connection with the Project, or for the reimbursement of the Grantee for its payment of such fees and expenses. Professional fees include only consultant, engineering, architectural and permitting fees.
- (e) The proceeds of the Grant will be disbursed for services rendered by a contractor and/or vendor or reimbursed to the Grantee in accordance with the Guidelines, the procedures and guidelines of MDA and this Agreement.
- (f) All proceeds of the Grant must be disbursed on or before May 1, 2003.
- (g) The proceeds of the Grant will not be disbursed until the Grantee performs to the satisfaction of the Board the requirements of Section 2(h) of the April Agreement.

**Section 3. Certificate of Grantee.** A condition precedent to all disbursements of the proceeds of the Grant shall be the delivery to the Board and MDA of a certificate of an authorized representative of the Grantee stating:

- (a) To the best of the Grantee's knowledge, the representations and warranties of the Grantee contained in this Agreement and the April Agreement are true and correct as of the date of the request for such disbursement with the same effect as if made on the date of such request for disbursement.
- (b) This Agreement and the April Agreement have been duly authorized, executed and delivered by the Grantee and each constitutes a legal, valid and binding obligation of the Grantee enforceable in accordance with their respective terms.
- (c) This Agreement and the April Agreement have not been amended or supplemented or modified since the date of their execution and each remains in full force and effect as of the date of the request for disbursement.
- (d) The authorization, execution and delivery of this Agreement and the April Agreement by the Grantee, and compliance by the Grantee with the provisions of this Agreement and the April Agreement, will not conflict with or constitute a breach or default of the Grantee's duties under this Agreement, the April Agreement or under any law, administrative regulation, court decree, resolution, charter, bylaw or other agreement to which the Grantee is subject or by which it is bound.
- (e) There is no action, suit, proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the best of its knowledge, after reasonable investigation and due inquiry, threatened against the Grantee in any way contesting or affecting the validity of this Agreement or the April Agreement or contesting the powers of the Grantee to enter into or perform its obligations under this Agreement or the April Agreement in any way.

**Section 4. Requisitions.**

- (a) Each requisition for disbursement of the proceeds of the Grant shall be in the form attached hereto as Annex A and incorporated herein by this reference thereto. Requisitions shall be submitted no more than once each calendar month and no later than the 25<sup>th</sup> day of each month. No requisition shall be approved by the Board and MDA until all conditions of this

Agreement and the Guidelines have been satisfied by the Grantee.

- (b) The Grantee shall provide the Board and MDA with timely and reasonable written notice of the amount of the disbursement of the proceeds of the Grant requested by the Grantee. Such notice, which may be incorporated in each requisition, shall contain all information necessary to enable the Board and MDA to prepare a request for a warrant as required by the Act including, without limitation, the name and title of the requesting authorized representative of the Grantee, the name of the contractor and/or vendor to be paid or the party to be reimbursed for its previous payment of the product delivered or work performed and a detailed description thereof. In addition, such notice shall certify that the amount requested is the just amount due at the current time, is currently unpaid, is for a product or service which has heretofore been delivered or performed and that all requirements in connection with the acquisition of such product or service have been complied with by the Grantee.
- (c) The Board shall meet monthly on or before the 10<sup>th</sup> day of each month to review and consider approval of each requisition.
- (d) The Board and MDA shall indicate in writing their approval of each requisition which approval shall be in the sole discretion of the Board and MDA.
- (e) Payment of each requisition shall be made within fourteen business (14) days of approval by the Board of the requisition.
- (f) Any action to be taken by the Board in connection with the review and approval of requisitions may be taken by the Screening Committee of the Board for and on behalf of the Board.

#### **Section 5. Audit, Reviews and Reports.**

- (a) The Grantee hereby acknowledges and agrees that the Grant is subject to audit by the Department of Audit of the State (the "Department") at the request of the Board or MDA and hereby agrees to make available to the Department any records it may request in connection with the use and expenditure of the proceeds of the Grant. The Grantee shall retain records for a period of three (3) years from the date of the last disbursement



of the Grant or until such time as directed by the Department, whichever is longer.

- (b) The Grantee agrees that the Project is subject to monthly review by an oversight review panel (the "Panel") comprised of representatives from the Board, the Mississippi Department of Agriculture and Commerce, MDA, the Yalobusha County Economic Development Foundation and the Mississippi Cattlemen's Association. The monthly reviews will take place at a location, date and time to be determined by the Board, which may include an on-site review. The Grantee agrees to fully cooperate in each such monthly review.
- (c) The Grantee agrees to provide the Board and MDA at the addresses listed in Section 12 of this Agreement with a Quarterly Report (the "Report") in connection with the Grant. The Report shall provide a summary accounting of the use of the proceeds of the Grant, and a detailed description of the Project and the progress made on each component of the Project during the quarterly period covered by the Report. The initial Report shall be provided to the Board and MDA no later than August 1, 2003. Each Report must be presented both orally and in writing. Upon agreement of the Board, the parties may waive the required oral presentation before the Board and arrange for the submission of a written Report. A final Report shall be provided by the Grantee within sixty (60) days of the date of initial operation of the Project.

**Section 6. Representations of the Board.** The Board makes the following representations as the basis for the undertakings on the part of the Grantee herein contained:

- (a) The Board is a public body of the State and is authorized pursuant to the provisions of the Act and the Guidelines to enter into the transactions contemplated by this Agreement.
- (b) The Board has full power and authority to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder.
- (c) The Board has been duly authorized to execute and deliver this Agreement and by proper action has duly authorized the execution and delivery hereof and as to the Board, this Agreement is valid and legally binding and enforceable in accordance with its terms.

- (d) The Grant will further the purposes of this Act by assisting the State's agricultural industry in the development, marketing and distribution of agricultural products.

**Section 7. Representations of the Grantee.** The Grantee makes the following representations as a basis for the Grant and the undertakings on the part of the Board herein contained:

- (a) The Grantee is a Mississippi limited partnership.
- (b) The Grantee has all necessary power and authority to enter into and perform its duties under this Agreement and, when executed and delivered by the respective parties hereto, this Agreement will constitute a legal, valid and binding obligation of the Grantee enforceable in accordance with its terms.
- (c) The execution and delivery of this Agreement and compliance with the provisions hereof will not conflict with, or constitute a breach of or default under, the Grantee's duties under any law, administrative regulation, court decree, resolution, charter, bylaws or other agreement to which the Grantee is subject or by which it is bound.
- (d) There is no consent, approval, authorization or other order of, filing with, or certification by, any regulatory authority having jurisdiction over the Grantee required for the execution, delivery or the consummation by the Grantee of any of the transactions contemplated by this Agreement and not already obtained.
- (e) There is no action, suit proceeding or investigation at law or in equity before or by any court or governmental agency or body pending or, to the best knowledge of the Grantee, after reasonable investigation and due inquiry, threatened against the Grantee in any way contesting or affecting the validity of this Agreement or contesting the powers of the Grantee to adopt, enter into or perform its obligations under this Agreement or materially and adversely affecting the properties or condition (financial or otherwise) or existence or powers of the Grantee.
- (f) The Grantee will not discriminate against any employee or any applicant for employment because of the race, religion, color, disability, national origin, sex or age.

- (g) The Grantee shall comply with all of the terms, conditions and provisions of this Agreement, the Guidelines, the Act, the April Agreement and the Loans.
- (h) The Grantee certifies that all of the information contained in the Application is true and correct as of the date of the Application and the date of this Agreement. The Grantee further acknowledges that the Board, in making the Grant, is relying upon the truthfulness and correctness of the information contained in the Application.
- (i) The Grantee certifies that the Project will be completed in a timely manner and to the satisfaction of the Board.
- (j) The proceeds of the Grant will be used in accordance with the requirements of this Agreement and solely for the Project as provided in this Agreement.
- (k) The Grantee covenants and agrees that it will create a minimum of 350 new net full-time jobs at the Project. The Grantee agrees that it will maintain such jobs for a period of sixty (60) consecutive months from the date of initial operation of the Project. A breach of this provision may, in the sole discretion of the Board, result in the termination of this Agreement in accordance with Section 9 of this Agreement and the Board pursuing the remedies set forth in Section 10 of this Agreement.
- (l) The Grantee specifically acknowledges and agrees to the provisions of Sections 8, 9 and 10 of this Agreement.
- (m) The Grantee represents and warrants that the Project will further the purposes of the Act by assisting the State's agricultural industry in the development, marketing and distribution of agricultural products.

**Section 8. Default.** Any failure by the Grantee to comply with the terms and provisions of this Agreement, the April Agreement or the Loans shall constitute an "event of default" hereunder and, if such "event of default" is not cured to the satisfaction of the Board within ten (10) days of written notice thereof by the Board to the Grantee, the Board may, in its sole discretion, pursue the remedies provided in Section 10 of this Agreement, including, but not limited to, the repayment of the proceeds of the Grant previously disbursed to the Grantee.

**Section 9. Termination.** The Board may terminate its obligations under this Agreement and in connection with the Grant, if, any event occurs, which would constitute

an "event of default" under this Agreement. In the event of termination, the Board may pursue the remedies described in Section 10 of this Agreement.

**Section 10. Remedies.** If an "event of default" occurs under this Agreement or this Agreement is terminated pursuant to Section 9 of this Agreement, the Board may, in its sole discretion, require the Grantee to repay the State all proceeds of the Grant previously disbursed and/or pursue any other remedy available at law or in equity. The Board may use such repayment for other purposes authorized under the Act and the Guidelines.

**Section 11. Notice Addresses.** All notices given pursuant to this Agreement shall be in writing signed by the party giving the notice and shall be given by certified mail, postage prepaid, prepaid overnight delivery, or hand delivery.

For the purposes of this Agreement, notices shall be sent to the following addresses or to such other addresses that such parties may designate in writing:

If to the Board:	Lester Spell, Jr., D.V.M., Co-Chairman 121 North Jefferson Street Jackson, Mississippi 39201
	Bob J. Rohrlack, Jr., C.E.D., Co-Chairman 501 North West Street Post Office Box 849 Jackson, Mississippi 39205
If to MDA:	Mr. Chance Carter Mississippi Development Authority State of Mississippi Post Office Box 849 Jackson, Mississippi 39205
If to the Grantee:	Mississippi Beef Processors, LLC 210 Jamestown Park Road, Suite 201 Brentwood, Tennessee 37027

**Section 12. Miscellaneous.**


- (a) This Agreement has been made by the Board and the Grantee, and no other person other than the foregoing and their successors or assigns, MDA and the State shall acquire or have any right under or by virtue of this Agreement.
- (b) This Agreement shall become effective upon the execution by the parties hereto and shall be valid and enforceable from and after the time of last execution.

- (c) If any paragraph or part of a paragraph of this Agreement shall be declared null and void or unenforceable against any of the parties hereto by any court of competent jurisdiction, such declaration shall not affect the validity or enforceability of any other section or part of a paragraph of this Agreement.
- (d) In the event any agreement contained in this Agreement shall be breached and such breach shall thereafter be waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.
- (e) This Agreement shall inure to the benefit of the Board and the Grantee and shall be binding upon the Board and the Grantee and their respective successors and assigns.
- (f) This Agreement shall be governed as to its validity, construction and performance by the laws of the State.
- (g) This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement.
- (h) No amendment, change, modification or alteration of this Agreement shall be made other than pursuant to a written instrument signed by the parties to this Agreement.

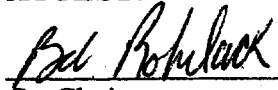
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

MISSISSIPPI LAND, WATER AND TIMBER  
RESOURCES BOARD (ACTING FOR AND  
ON BEHALF OF THE STATE OF  
MISSISSIPPI)

Date: 5-3-02

  
Co-Chairman

ATTEST:

  
Co-Chairman

**MISSISSIPPI BEEF PROCESSORS, LLC**

By: Richard N. Hall

Date: 5/23/2

Title: CEO/Owner

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As required by the April Agreement, the undersigned have reviewed and approved the form of the within Agreement.

**MISSISSIPPI DEVELOPMENT AUTHORITY**

By: *Bo Populack*  
Executive Director

Date: 5/3/02

**MIKE MOORE, ATTORNEY GENERAL OF  
THE STATE OF MISSISSIPPI**

By: *Mike Moore*  
Title: Attorney General

Date: 5/22/02